

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

800 RIVER ROAD OPERATING COMPANY, LLC d/b/a WOODCREST HEALTH CARE CENTER Employer	
and	NLRB Case No: 22-RC-073078
1199 SEIU, UNITED HEALTHCARE WORKERS EAST Petitioner	

**EMPLOYER'S REQUEST FOR REVIEW OF THE ACTING REGIONAL DIRECTOR'S
APRIL 17, 2012 REPORT ON OBJECTIONS AND NOTICE OF HEARING**

On January 23, 2012, 1199SEIU United Healthcare Workers East, New Jersey ("Union") filed a Petition with Region 22 of the National Labor Relations Board ("Board") requesting a representation election among certain employees of 800 River Road Operating Company, LLC d/b/a Woodcrest Health Care Center ("Employer", "Woodcrest", or "Center"). Pursuant to a Stipulated Election Agreement executed by the parties and approved by the Acting Regional Director on February 7, 2012, a secret ballot election was conducted on March 9, 2012.¹ The tally of ballots showed 122 votes cast for representation by the Union and 81 votes cast against the Union.

¹ Pursuant to the Stipulated Election Agreement, the election unit was comprised of all full time and regular part time non-professional employees including licensed practical nurses, certified nursing aides, dietary aides, housekeepers, laundry aides, porters, recreation aides, restorative aides, rehabilitation techs, central supply clerks, unit secretaries, receptionists and building maintenance workers employed by the Employer at its New Milford, New Jersey facility during the payroll period ending Sunday, February 5, 2012, excluding all office clerical employees, cooks, registered nurses, dieticians, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech therapists, social workers, staffing coordinators/schedulers, payroll/benefits coordinators, MDS specialists, MDS data clerks, account payable clerks, account receivable clerks, and all other professional employees, guards and supervisors as defined in the Act.

On March 16, 2012, the Employer filed timely Objections to Conduct Affecting the Results of the Election ("Objections"). The Employer alleged that the Union and/or its agents engaged in impermissible conduct, both during the election campaign and on the day of the election, that coerced employees and denied them a free choice in the election. The Employer requested that the Region set aside the election and order a new election.

On April 17, 2012, the Acting Regional Director issued a Report on Objections and Notice of Hearing ("Report") wherein the Region granted a hearing on Employer's Objections 1 and 2 and recommended that the Board overrule Objections 3-12. The Report informed the parties of the right to file a Request for Review.² The Employer now files this Request for Review from the Report's recommended overruling of Employer Objections 3, 4, 5, 7, 8, 11, and 12 and requests a hearing on these Objections. The Employer offers the below, along with its March 26, 2012 evidential submission to the Region (appended as Attachment A), in support of its Request for Review of the referenced Objections.³ (The Employer has redacted the names of witnesses and their expected testimony in connection with Objections 1 and 2, which are the subject of a hearing now scheduled to begin on May 10, 2012.)

**The Union, Through its Agents, Improperly Offered
Monetary Reward and/or Created the Impression that Voters
Would Receive Monetary Reward by Voting for the Union
(Objection 5)**

The Board has long held that a union's promise or grant of benefit to potential voters during the critical period is "akin to an employer's grant of a wage increase in anticipation of a representation election...[which] subjects the donees to a constraint to vote for the donor union."

² This appeal is styled as a Request for Review in accordance with the Region's express directions in the Report. However, our reading of Sections 11394.4 and 11394.5 of the Casehandling Manual (Part II) suggests that filing of exceptions may be the appropriate vehicle for appealing the Region's dismissal of Objections without a hearing. Accordingly, we file this Request for Review with the expectation that the Board will treat the submission as Exceptions should the Board agree that is the appropriate procedural vehicle.

³ Although the Employer is not specifically pressing review of Objections 6, 9 and 10, in the event it is granted a hearing on one or more of Objections 7, 8, or 12 it reserves the right to elicit evidence at such a hearing with respect to those Objections.

Wagner Electric Corp., 167 NLRB 532, 533 (1967), cited in Stericycle, Inc., 2011 NLRB LEXIS 456, at *12 (Aug. 23, 2011); see also Mailing Services, 293 NLRB 565 (1989)(union's provision of free medical examinations found objectionable). This is a valid ground for setting aside an election and directing a second election because "an employee's vote should be governed by consideration of the advantages and disadvantages of union representation and not by inducements unrelated to the merits of such representation." Stericycle, Inc., 2011 NLRB LEXIS 456, at *13. See Good Samaritan Hospital, 2010 NLRB LEXIS 178 (Jan. 29, 2010) (on remand, ALJ stated that "a union, like an employer, is barred during the critical period from conferring on voters a financial benefit to which they otherwise would not be entitled). In short, the Board "does not condemn a union's efforts to make itself a more attractive candidate, [but] the Board does require that a union's methods of self-enhancement exclude the direct conferral of substantial benefits...." Mailing Services, 293 NLRB at 566.

In Objection 5, the Employer alleges that the Union and its agents collaborated with former Woodcrest Administrator David Repoli and former Woodcrest Director of Nursing Clarice Gogia, who had been discharged by Woodcrest in July 2011 for operating businesses out of the Center using Center employees, and that this created the impression that there would be a resumption of these economic opportunities and supplemental income for Center employees if the Union won the election. The essence of the Objection is that Repoli and Gogia were involved in the Union campaign, Union agents (possibly including Repoli and Gogia) told employees that the side jobs they had previously secured through Repoli and Gogia would once again become available to them if the Union won the election, and that employees believed that this would receive a direct monetary benefit in the form of additional income if they voted for Union representation. (Exhibit A at 8)

Insofar as Repoli and Gogia and their business(es) are the source of the money that Woodcrest employees believed they would have opportunity to earn if the Union won the election, the Board should conclude that Repoli and Gogia were themselves agents of the

Union. The Board relies upon common law principles of agency, including apparent authority, in deciding whether the conduct of a third party is attributable to a party. Mar-Jam Supply Co., 337 NLRB 337 (2001). It is easy to see that employees at Woodcrest understood that Repoli and Gogia were functioning as agents of the Union or, at the very least, had apparent authority for the Union during the election campaign. As the Report noted (at 6), Employer witness “K” is expected to testify that she heard Repoli and Gogia were instrumental in connecting the Union to employees who became the principal organizers at Woodcrest. Witness “K” is also expected to testify that approximately one week before the election she observed a sticker on a wall in close proximity to the Board election notice containing the phrase “donated by Gogia”. Several other employees are expected to testify that they believed Repoli and Gogia were working intimately with the Union and its employee-organizers at Woodcrest. Since Woodcrest employees understood or believed that Repoli and Gogia were deeply involved with the Union and its principal employee-organizers, the Board should ascribe the conduct of Repoli and Gogia to the Union.

The Acting Regional Director recommended that the Board overrule this Objection, stating that the Employer did not offer any evidence to support its contention that,

witnesses would testify that the named former managers **solicited authorization cards** on behalf of Petitioner, either during or after their employment with the Employer. The Employer’s submission includes general, vague assertions that the named former managers ‘were involved in bringing the Union to the Center,’ without more.

(Report at 7)(emphasis added). While it is true that Employer witnesses are expected to testify that Repoli and Gogia solicited Union authorization cards, that is not the crux of Objection 5. Instead, the Employer asserts that the Union, through Repoli and Gogia as well as other Union agents, offered specific promises of monetary benefit to election unit employees in exchange for a “yes” vote on election day. By encouraging employees to vote for the Union with the enticement that a Union victory would translate into Repoli and Gogia once again offering

outside employment opportunities and significant additional income, the Union and its agents engaged in objectionable conduct by improperly offering a monetary reward in exchange for election unit employees voting “yes” for the Union.

II.

The Union’s Improper Pre-Election Conduct, Taken as a Whole, Created a Coercive Atmosphere, Interfered with Employee Free Choice, and Impinged Upon Several Employees’ Exercise of Their Fundamental Right to Vote (Objections 3, 4, 7, 8, 11 and 12)

Employer Objections 3, 4, 7, 8, 11 and 12 address coercive, fraudulent, and otherwise improper pre-election conduct of the Union and its agents, including conduct during the insulated 24-hour period immediately before the election. To the extent that Board law requires a showing that a determinative number of ballots were impacted in order to sustain any one of these Objections, the Employer asserts that (A) several of these Objections themselves involve an outcome-determinative number of votes and (B) the Board should assess the challenged conduct cumulatively and ascertain whether the number of ballots affected by different kinds of objectionable conduct (including Objections 1 and 2, which are proceeding to hearing) was sufficiently impactful to affect the outcome of the election. When viewed in totality, it is apparent that the Union engaged in a course of conduct that not only created a coercive atmosphere and interfered with employee free choice but, further, so impinged upon the fundamental right of employees to vote that the Region should, at minimum, have scheduled these Objections for hearing.

A. The Union Engaged in Improper Electioneering that Created a Coercive Atmosphere (Objections 3, 4 and 11)

The Union engaged in improper electioneering, which gave rise to a coercive atmosphere that affected how employees voted.

The Union conduct described in Objection 11 (incorporating by reference certain conduct alleged in Objection 3) violated Peerless Plywood, 107 NLRB 427 (1953). That decision

prohibits “election speeches on company time to massed assemblies of employees within 24 hours before the scheduled time for conducting an election.” 107 NLRB at 429. The rule applies equally to unions and employers. For example, prolonged sound truck broadcasts of speeches and partisan songs are objectionable under Peerless Plywood when the broadcasts are heard in a plant by employees at work. Virginia Concrete, 338 NLRB 1182, 1187 (2003); United States Gypsum Co., 115 NLRB 734, 734-735 (1956) (emphasizing that although the employees subjected to the broadcast were not in a “massed assembly”, they “were not isolated, but were working with or near each other”). In Virginia Concrete, the Board reviewed an ALJ’s decision likening a text message the employer sent to employee mobile data units to the sound trucks in United States Gypsum. Although the Board rejected the judge’s finding that the employer’s messages violated Peerless Plywood, the outcome in Virginia Concrete was grounded in the fact that the employer transmitted text messages to employees individually in their trucks. Since the text message was not delivered to “massed assemblies of employees”, as in Peerless, or employees “working with or near each other”, as in United States Gypsum, the Board concluded that the communication was more analogous to campaign literature than to a campaign speech or sound truck broadcast and overruled the objection.

The import of Virginia Concrete along with other such decisions is that Peerless Plywood applies to union communications directed at multiple employees during the 24-hour insulated period when the employer has insufficient opportunity to address and attempt to refute the union’s statements. Compare J&D Transportation, 2010 NLRB LEXIS 197 at *19 (July 22, 2010), where the Board approved an ALJ decision finding that a text message sent to eligible voters by the Union’s election observer reminding them to vote was not objectionable. The conduct at issue here should be deemed objectionable since it sought to **deter** eligible voters from exercising their fundamental right to vote and participate in the election, in contrast to the communication in J&D Transportation that encouraged participation in the election.

A hearing is necessary here to determine the extent of the Union's improper contact with election unit employees during the 24 hours prior to the election. Against the backdrop at bar of persistent and unrelenting Union visits, phone calls, and communication, Woodcrest should have an opportunity to ascertain by subpoena and otherwise the extent to which Union agents engaged in mass texting and emailing as well as the identity of employees who received such communications while at work. If the Board allows or condones conduct such as that alleged, employers and unions alike will barrage voters at work with texts, phone messages and emails including, as here, patently misleading or fraudulent communications to the effect that "we won" and the employee no longer even needs to vote. The Board should adopt a bright line test and prohibit either party from sending mass text messages and emails to voters during the 24-hour period or while the polls are open.

B. The Union's Pre-Election Conduct Not Only Interfered With Employee Free Choice but Impinged Upon the Fundamental Right of Employees to Vote (Objections 7, 8 and 12)

Objection 7 states that just before the day of the election the Union and its agents, pretending to speak for the Center, misinformed eligible voters that the election was cancelled and that they should not come to Woodcrest to vote. Objection 8 indicates that just before the day of the election the Union and its agents misinformed eligible voters that they should not cast a ballot because the Union had already "won" and had the support of a majority of employees. Several employees have reported that they received mailed leaflets or phone calls advising of one or the other of the above.

It is well-settled that the Board has a "duty to safeguard the election process from conduct that inhibits the employees' exercise of free choice." Brinks, Inc., 331 NLRB 46, 46 (2000). The Board has further held that "where the conduct of a party to the election causes an employee to miss the opportunity to vote the Board will find that to be objectionable if the employees vote is determinative and the employee was disenfranchised through no "fault" of

[the employee].” Sahuaro Petroleum & Asphalt Co., 306 NLRB 586, 586-587 (1992); citing Versail Mfg., 212 NLRB 592, 593 (1974).

When faced with evidence of impermissible electioneering, the Board determines whether the conduct, under the circumstances, ‘is sufficient to warrant an inference that it interfered with the free choice of voters.’ This determination involves a number of factors. The Board considers not only whether the conduct occurred within or near the polling place, but also the extent and nature of the alleged electioneering, and whether it is conducted by a party to the election or by employees.

Brinks, Inc., 331 NLRB at 46, citing Boston Insulated Wire & Cable Co., 259 NLRB 1118, 1118-1119 (1982), enfd., 703 F.2d 876 (5th Cir. 1983).

Objections 7 and 8 demonstrate that the Union and its agents engaged in specific conduct designed to discourage voters (presumably those the Union thought were anti-Union) from casting a ballot in the election. Much of the challenged conduct occurred during the 24-hour period immediately preceding the election, undermining the Employer’s opportunity to refute the misinformation. Significantly, this was not mere campaign propaganda. Rather, in Objection 7, there were fraudulent verbal communications targeting voters the Union believed were unlikely to vote “yes” in an attempt to prevent those persons, through deception, from exercising their fundamental right to vote. As to Objection 8, Center personnel report receipt of a flyer at their homes misrepresenting that the Union has already won the election and that they need not vote. (Attachment A at 9-10)

The Region recommended that the Board overrule Objection 7 because the evidence submitted by the Employer is “insufficient to establish that the alleged objectionable conduct is attributable to the Union....” (Report at 8). That conclusion is deficient because it examines the objection in isolation. Objection 8, which is quite similar, asserts that voters received leaflets advising them not to vote because the Union had already won. Objection 7 should be assessed in the light of the communications in Objection 8, which by their terms sought to deter opponents of the Union from voting. So too should the communications in Objection 7 be

viewed as an effort by Union agents to discourage voters that they believed were “no” votes from voting.

The Report rejected Objection 8 on the ground that expressions of confidence by the Union as to it prevailing in an election are not objectionable. However, the allegation is not that the Union mailed leaflets anticipating victory; rather, the offer of proof indicated that at least two employees received flyers that stated that the “Union has won” (Attachment A at 10). The use of the past tense, coupled with the Objection 7 conduct suggesting that voters need not show up to vote because the election had been cancelled, presents a scenario in which an effort was made to deter voters from exercising their right to vote. A flyer threatening physical violence in the event someone shows up to vote would not be condoned. A misrepresentation that the election has already been decided prior to the day of the election should not be any more acceptable insofar as it deters participation of voters in the election.

When a right as fundamental as that of voting is impinged in a context of fraud and deception, the Region should order a hearing to permit the objecting party to take every appropriate step to uncover and rectify such fraud or deception as well as identify its source. Since the Region did not do so here, the Board should reverse this portion of the Report and order a hearing.

The Report’s rejection of Objection 12 underscores the importance of this outcome. The Employer contends that at least one Union agent misrepresented her identity, posing as a Center employee, in an effort to convince a voter that Woodcrest personnel favored the Union (Attachment A at 12). This is not, as the Region described it, “mere propaganda and permissible election campaigning” (Report at 11). It is outright fraud and deception connected to the fundamental right to vote. Analogizing such conduct to empty campaign trail promises constitutes a complete abdication by the Board of its duty to protect the integrity of each voter’s right to vote. Conduct such as that alleged in Objections 7, 8, and 12 is clearly destructive of the laboratory conditions necessary for a free and fair election, and at minimum the Board

should direct a hearing given the impingement such conduct poses to the fundamental right to vote. Indeed, these objections afford the Board an opportunity to adopt a bright line test prohibiting unions and employers alike from making any kind of statement claiming that it already "has won", that the election is cancelled, or otherwise communicating a message directed toward deterring someone from voting.

CONCLUSION

For the reasons set forth herein as well as in the Employer's March 26, 2012 submission to the Region, the Board should reverse the Report and order that the Region conduct a hearing on the Objections that it overruled.

Respectfully submitted,

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Dated: May 8, 2012

EXHIBIT A

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March 26, 2012

VIA ELECTRONIC FILING

J. Michael Lightner, Regional Director
National Labor Relations Board, Region 22
20 Washington Place, 6th Floor
Newark, New Jersey 07102-3115

**RE: *800 River Road Operating Company, LLC d/b/a Woodcrest
Health Care Center and 1199SEIU United Healthcare Workers
East New Jersey Region***
NLRB Case No.: 22-RC-073078

Dear Mr. Lightner:

This Firm is counsel to 800 River Road Operating Company, LLC d/b/a Woodcrest Health Care Center ("Center" or "Woodcrest") in connection with the above-captioned case. On March 16, 2012, the Center filed timely Objections to Conduct Affecting the Results of the Election ("Objections") conducted on March 9, 2012. This letter is the Center's formal submission of evidence in support of its Objections (submitted today in accordance with the one business day extension the Region granted on March 20, 2012).

The Center submits that the evidence in support of its Objections, as outlined below, demonstrates that improper conduct occurred during the critical election period, interfering with the laboratory conditions necessary for a free and fair election and compromising the integrity of the election process. As a result, employees were not accorded the opportunity to exercise their statutorily-protected rights in an atmosphere free from interference and coercion and the Region must set aside the election.

Significantly, most of the evidence in support of these Objections was discovered by the Center as a result of an investigation it conducted after employees voiced complaints about conduct in which 1199SEIU United Healthcare Workers East, New Jersey Regional ("1199SEIU" or "Union") engaged through its representatives and agents, including employees who supported and helped organize the Union.¹ This letter sets out the expected testimony and other evidence currently available regarding the impermissible conduct in which the Union and

¹ The Center asserts that certain Union supporters referenced in this letter acted on behalf of the Union and are agents of the Union under applicable Board law. Among other things, these individuals answered other employees' questions about the Union, distributed Union literature, acted as the eyes and ears of the Union, and spoke on behalf of the Union. However, because the misconduct involved in this case was so serious and widespread, even if these employees were not legal agents of the Union, the evidence supporting the Objections is sufficient to set aside the election results.

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others engaged during the election process.² We will contact the Region if additional evidence is uncovered by the Center or if additional employees voice complaints about any other impermissible conduct.

Objection 1: During the critical period, supervisors created a coercive atmosphere and/or interfered with employee free choice by soliciting Union authorization cards and/or creating the impression that they had solicited or were soliciting Union authorization cards.

Nature of the Objectionable Conduct

During the critical period, 3 persons who are supervisors under Section 2(11) of the National Labor Relations Act ("Act") were involved in the solicitation of Union authorization cards from bargaining unit employees. The supervisors in issue were: (1) Shift supervisor Janet Lewis, (2) Unit supervisor Bonita Thornton, and (3) Unit supervisor Jane Cordero. (For ease of reference, the names of the supervisors are underlined below.)

² If the Region deems it necessary, the Center is willing to provide the Region with an opportunity to interview the employee witnesses at its New Milford, New Jersey facility. If it is determined that interviews are needed, please contact us to arrange a mutually convenient time.

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Objection 2: During the critical period, supervisors created a coercive atmosphere and/or interfered with employee free choice by promoting the Union and/or creating the impression that they favored the Union, conveying to voters that they should support the Union and vote for it in the election.

Nature of the Objectionable Conduct

During the critical period, 3 persons who were Section 2(11) supervisors--Environmental Director Israel Vergel de Dios and Unit Managers Cordero and Thornton--actively supported the Union. Vergel de Dios told his employees that they were underpaid and unappreciated and needed the protection of the Union. Cordero was involved in directing employees to attend a Union meeting. The Center understands that Thornton attended Union meetings and advocated for the Union to and in the presence of election unit employees. (For ease of reference, the names of the supervisors are underlined below.)

Objection 3: During the critical period, the Union, through its agents, created a coercive atmosphere and/or interfered with employee free choice through frequent and unrelenting solicitation of voters by means of personal visits to their homes, phone calls and voicemails, and text messages and emails.

Nature of the Objectionable Conduct

During the critical period, including within the 24-hour period immediately preceding the election, Union agents solicited the support of employees by appearing, without invitation, at their homes, telephoning them, leaving voicemails, and sending them text messages. In some instances, Union representatives went to an employee's home multiple times without invitation and awakened the employee when (s)he was trying to sleep. Union representatives were very aggressive, refusing to leave some employees' homes despite repeated requests by the employees, and engaged in surveillance or created the impression that they were engaging in surveillance of employees at their homes or in coming and going from their homes.

Witness Testimony in Support of Objection 3:

Sara Jimenez

Election unit employee Sara Jimenez, Recreation Assistant, is expected to testify to the following facts. She felt harassed by the Union when its representatives called upon her at her home 4 times. In fact, after she told Union representatives that she did not want the Union appearing at her home, Union representatives appeared there 3 additional times despite her direction that the Union refrain from further contact with her there. Also, a Union organizer came to her house and told Jimenez (falsely, as Jimenez later learned) that she worked as a Certified Nursing Assistant ("CNA") at the Center and was supporting the Union.

Cynthia Brown

Election unit employee Cynthia Brown, CNA, is expected to testify that 2 to 3 days before the election, the Union visited her home 3 times. Brown told the Union representative that she was not interested in the Union or hearing what it had to say. The Union representative came back a second time and offered to take Brown to lunch. She declined and asked the representative not to return. Despite Brown's direction, a Union representative returned for a third time that day, rang her doorbell, and offered to give Brown a ride to the election.

Martial Dogbo

Election unit employee Martial Dogbo, CNA, will testify that a Union representative came to his house on 2 separate occasions and pressured him to sign an authorization card. He will further testify that the Union representative disrupted his day and harassed him.

Natalia Gousseva

Election unit employee Gousseva is expected to testify that Union representatives telephoned her at least 3 times and insisted on visiting her at home. Gousseva will testify that she felt harassed by the telephone calls.

Jonas Dompur

Election unit employee Jonas Dompur, LPN, is expected to testify that prior to the Center transmitting the *Excelsior* list, a Union representative awakened him at his home while he was sleeping. The Union representative was forceful, pressing Dompur to sign something when he had just awakened and was not alert. Dompur was disturbed that the Union knew his address before the Center provided his address to the Region for transmission to the Union.

Eugene Sapiandante

Election unit employee Eugene Sapiandante, CNA, is expected to testify that Union representatives harassed and stalked him at his home. Sapiandante has stated that Union officials remained in front of his house for extended periods of time. In at least one instance, Union representatives appeared on his doorstep within minutes of him arriving at home, leaving Sapiandante believing that the Union was stalking him and either had followed him when he departed his home or was positioned nearby and watching for when he returned to his home.

Myla Canlas

Election unit employee Myla Canlas, LPN, is expected to testify that 2 weeks prior to the election, Union representatives came to her parents' house (which is the residence of her sister and brother, both of whom were also election unit employees). Canlas happened to be there, opened the door, and found the Union representatives persistent and intrusive: she indicated that she did not want to speak with them, but they refused to leave for more than 5 minutes and pressed her to speak with them about the Union and why she should support it. Among other things, they told her that she and her siblings would "have to speak with them sooner or later".

Clara Canlas

Election unit employee Clara Canlas, Unit Clerk, is expected to testify that she felt harassed by the Union's persistent, intrusive, and uninvited appearances at her parents' home where she and her brother reside.

Objection 4: During the critical period, the Union, through its agents, engaged in surveillance of voters and/or created the impression that it was engaging in surveillance of voters through frequent and unrelenting visits to voter residences, being seen on the property at which voters resided other than at the front door, and appearing at voter residences mere minutes after voters who had left their homes returned to their homes.

Nature of the Objectionable Conduct

During the critical period, including the 24-hour period immediately before the election, the Union improperly created the impression that it was engaging in surveillance of election unit employees. Several employees reported that the Union came to their house on multiple occasions and appeared to know exactly when employees departed from and returned to their homes.

Witness Testimony in Support of Objection 4:

Eugene Sapiandante

See summary of expected Sapiandante testimony in Objection 3 above.

Ellen Grace Dumalaoco

Election unit employee Ellen Grace Dumalaoco, LPN, is expected to testify that the Union came to her home and asked a family member what vehicle she drove, which created the impression that the Union was engaging in surveillance of her from outside her home.

Objection 5: During the critical period, the Union, through its agents, offered voters monetary reward and/or created the impression that voters would receive monetary reward by joining openly with discharged former managers of the Employer, former Administrator David Repoli and former Director of Nursing Clarice Gogia, both of whom had operated businesses out of the Employer's Center while employed there that had profited voters who worked for the Employer at that time.

Nature of the Objectionable Conduct

Prior to being discharged in July 2011, former Woodcrest Director of Nursing Gogia and former Woodcrest Administrator David Repoli operated businesses that relied in part upon Woodcrest employees to furnish the services those businesses sold. As a result, Woodcrest employees in the election unit received compensation from the businesses that Gogia and Repoli ran. Since Gogia and Repoli facilitated the Union's organizing drive, assisting the Union in securing support and authorization cards from Center employees, Woodcrest employees knew that Gogia and Repoli were involved with the Union and have supported the Union believing that they will receive remuneration additional to that they currently receive, the same as when Gogia and Repoli were running the Center, if the Union becomes the Center's collective bargaining representative.

Witness Testimony in Support of Objection 5:

Gloria Paro

Election unit employee Gloria Paro, CNA, is expected to testify that several day shift employees have stated that Repoli and Gogia were instrumental in bringing the Union into the Center.

Angela Radalat

Election unit employee Radalat is expected to testify that she heard that Repoli and Gogia were instrumental in connecting the Union to employees who became the principal organizers at the Center.

Also, following the election, Radalat received a text from Rowena Aquino, a former supervisor at the Center who subsequently was the Director of Nursing at another Care One location and was discharged around the same time as Clarice Gogia and David Repoli. In the text, Aquino remarked favorably on the Union's victory. Radalat's understanding is that Aquino is allied with Gogia and Repoli and believes that the text Aquino transmitted indicates that all of these former Center employees, who were discharged around the same time, were involved in bringing the Union to the Center.

Finally, about 1 week before the election, a sticker with the phrase "Donated by Gogia" was located on a wall in close proximity to an NLRB election notice.

The Center is adverse to Repoli and Gogia in a civil lawsuit and, therefore, must subpoena them in order to elicit testimony from them regarding their involvement with the Union and the organizing drive as alleged above. The Center is also adverse to Katherine Frost, the Center's former Director of Marketing, and must subpoena her in order to elicit testimony from her regarding the involvement of Repoli and Gogia as alleged above.

Objection 6: During the critical period, the Union, through its agents, promised voters monetary reward and other benefits through reduction of dues and/or initiation fees for those voters who were already Union members at other organizations and/or had already signed union authorization cards.

Nature of the Objectionable Conduct

The Center is continuing its investigation of this Objection and will supplement this response with further detailed information either prior to or at a hearing of this matter, whenever first available.

Objection 7: During the critical period, the Union, through its agents, conveyed to voters that they should not report to the Center on their day off, which was the day of the election, because the election had been cancelled.

Nature of the Objectionable Conduct

During the 24-hour period immediately preceding the election, Union agents telephoned employees, claiming to be calling from the Center, and instructed them not to appear to vote. The Union directed these telephone calls to election unit employees who it believed would vote against the Union.

Witness Testimony in Support of Objection 7:

Lorri Senk

Administrator Senk is expected to testify that several employees, including Jordine Enrique and Constance Vaughan, told her that during the 24-hour period immediately preceding the election they received telephone calls at home from one or more individuals purporting to call from the Center and stating that the employee did not need to vote the following day because the election was cancelled.

Jordine Enrique

Jordine Enrique is expected to testify that the day before the election she told Senk that earlier that same day she had received a telephone call from someone at the Center who told her that she did not need to come into the Center the next day to vote because the election had been cancelled.

Constance Vaughan

Constance Vaughan, CAN, is expected to testify that the day before the election she told Senk that earlier that same day she had received a telephone call from someone at the Center who

told her that she did not need to come into the Center the next day to vote because the election had been cancelled.

Objection 8: During the critical period, the Union, through its agents, conveyed to voters that they should not cast a ballot in the election because the Union had support of a majority of the eligible voters and as a result their votes would be meaningless.

Nature of the Objectionable Conduct

During the critical period, including the 24-hour period immediately preceding the election, Union representatives distributed a flyer to election unit employees proclaiming that it had won the election and told employees who it believed would vote against the Union that they did not need to vote.

Witness Testimony in Support of Objection 8:

Angela Radalat

Election unit member Radalat is expected to testify that before the election she received in the mail 2 flyers from the Union stating that the "Union has won".

Dawn Marie Sormani

Election unit member Sormani is expected to testify that she received a flyer from the Union, prior to the election, stating that the "Union has won".

Objection 9: During the critical period, including the day of the election and/or while the polls were open, the Union, through its agents, improperly electioneered and campaigned, among other ways, through observers intentionally wearing colors and clothing associated with support for the Union.

Nature of the Objectionable Conduct

Election observers wore the Union's color, purple, at the election site. Inasmuch as it was widely acknowledged that Union supporters wore purple during the election campaign, when election observers wore purple while serving in their observer roles at the place where ballots were cast they were engaged in improper electioneering in the vicinity of the polling place.

Witness Testimony in Support of Objection 9:

The Center can call as witnesses either the observers themselves or election unit members who would be expected to testify as to what the observers wore while serving in their observer

capacity as well as discussions that took place during the campaign in which it was widely acknowledged that purple was the Union's color and that individuals wearing that color were signifying their support for the Union.

Objection 10: During the critical period, including the day of the election and/or while the polls were open, and/or sometimes while the employees were proceeding to the polling area to vote, the Union, through its agents, improperly electioneered through telephone calls, voicemails, and text messages and/or other electronic communications.

Nature of the Objectionable Conduct

During the 24 hours preceding the election, including while voters headed to the polling area to cast ballots, the Union telephoned, texted, and otherwise communicated with employees in an effort to sway how they voted.

Witness Testimony in Support of Objection 10:

The Center is continuing its investigation of this Objection and will supplement this response with further detailed information either prior to or at a hearing of this matter, whenever first available.

Objection 11: During the critical period, including within the insulated 24-hour period immediately preceding the election, the Union, through its agents, intimidated and/or threatened voters through frequent and unrelenting visits to voter residences, phone calls, emails, and text messages.

Nature of the Objectionable Conduct

See the explanation set forth in Objection 3.

Witness Testimony in Support of Objection 11:

See Objection 3. The Center is continuing its investigation of this Objection and will supplement this response with further detailed information either prior to or at a hearing of this matter, whenever first available.

Objection 12: During the critical period, the Union, through its agents, created a coercive atmosphere and/or interfered with employee free choice by having individuals falsely pose as Center employees, state to voters that they favored union representation, and otherwise fraudulently mislead voters into believing that they should vote "yes" on election day.

Nature of the Objectionable Conduct

During the critical period, Union representatives went to employees' homes posing as Center employees in an attempt to mislead votes into believing that they should vote "yes" on election day.

Witness Testimony in Support of Objection 12:

Sara Jimenez

See summary of expected Jimenez testimony in Objection 3 above.

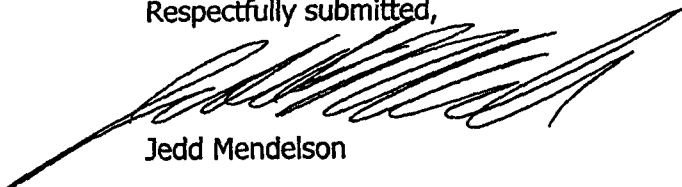
Conclusion

The foregoing evidence establishes that the improper conduct of the Union, through its representatives, agents, and/or supporters, destroyed the laboratory conditions essential to a free and fair election. Given the serious misconduct that occurred during the critical election period and the coercive nature of the violations, it is clear that the actions so tainted the election process as to deprive eligible employee-voters of a free and fair choice in the election.

Under these circumstances, the Center submits that the evidence in this case requires that the Region set aside the election. In the alternative, the Center submits that fundamental principles of fairness and due process dictate that it be given the opportunity to present all of its evidence in support of the Objections to the Region through the sworn testimony of its witnesses before a Hearing Officer prior to any determination being made regarding the merit of these Objections.

If you have any questions, or if we can be of further assistance, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jedd Mendelson", is written over a horizontal line.

Jedd Mendelson

JM/pnk

EXHIBIT A

Here the Names of the Union Insiders

- Dave
- Clarise
- Jane Corderro
- Carastig
- Bemí Sajimi
- Regina Richards
- Samuel Nimako
- Robin Vallis
- Suzette Gilles